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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MANUEL S. MELENDEZ

on Habeas Corpus.

G041697

(Super. Ct. No. 07CF3732)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to permit the filing of a late notice of appeal to challenge a judgment of the Superior Court of Orange County, Richard W. Stanford, Jr., Judge. Petition granted.

Beatrice C. Tillman for Petitioner.

Edmund G. Brown, Jr., Attorney General, and Gary W. Schons, Senior Assistant Attorney General, for Respondent.

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THE COURT:\*

Following his conviction and sentencing to 11 years for possession of a firearm by a felon and other crimes, petitioner Manuel S. Melendez told his trial counsel he wanted to file a notice of appeal. Counsel agreed to file. The notice of appeal was timely prepared but counsel inadvertently submitted it for filing one day late. This petition for relief was filed within a very short period after petitioner first became aware the notice of appeal had not been timely filed. (*In re Benoit* (1973) 10 Cal.3d 72.)

The Attorney General was served with a copy of the petition. He advises us that he does not oppose the relief requested.

The principle of constructive filing of a notice of appeal in a criminal case is applied in situations where, as here, defendant asks trial counsel to file a notice of appeal on defendant's behalf, counsel agrees to file such notice, but counsel fails to do so in a timely matter due to no fault of appellant. (*In re Benoit, supra*, 10 Cal.3d at pp. 87-88; see Pen. Code, § 1240.1, subd. (b).)

Good cause appearing, and the Attorney General having effectively waived the necessity of issuing an order to show cause, the petition for relief is granted. On petitioner's behalf, attorney Beatrice C. Tillman is directed to prepare and file a notice of appeal in Orange County Superior Court case number 07CF3732, and the clerk of the superior court is directed to accept the notice for filing, if it is presented within 20 days of this opinion becoming final. In the interests of justice, this opinion is deemed final forthwith.

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\* Before Rylaarsdam, Acting P. J., Moore, J., and Fybel, J.